

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 RANDY SMITH,

11 Petitioner,

12 v.

13 SCOTT FRAKES.

14 Respondent.

CASE NO. C12-5197 BHS-JRC

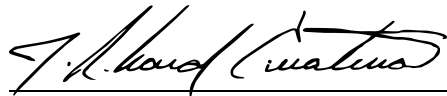
ORDER DENYING APPOINTMENT
OF COUNSEL

15
16 This habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, has been referred to the
17 undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636 (b)(1)(A) and (B) and Local
18 Magistrate Judge Rules MJR 1, MJR 3, and MJR 4. Petitioner has filed a motion for appointment
19 of counsel (ECF No. 8). Petitioner cites to the Sixth Amendment and to 18 U.S.C. §3006A as
20 authority for an alleged entitlement to appointment of counsel. 18 U.S.C. § 3006A addresses
21 appointment of counsel for criminal cases brought in federal court. This section of the U.S.C.
22 does not address 28 U.S.C. §2254 habeas proceedings, which is subject to different rules.

23 There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254
24 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature.

1 Brown v. Vasquez, 952 F.2d 1164, 1168 (9th Cir. 1991) (*citing* McCleskey v. Zant, 499 U.S.
2 467, 495 (1991)); see Ortiz v. Stewart, 149 F.3d 923, 939 (9th Cir. 1998) (“There is simply no
3 constitutional right to an attorney in a state post-conviction proceeding.”); see also Terrovona v.
4 Kincheloe, 852 F.2d 424, 429 (9th Cir. 1988); and Rule 8(c) of the Rules Governing Section
5 2254 Cases in the United States District Courts. The Court has not ordered an evidentiary
6 hearing in this case. The motion for appointment of counsel is denied at this time.

7 Dated this 10th day of April, 2012.

8 

9 J. Richard Creatura
10 United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24